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November 17, 2003

Notice of Ex Parte Communication

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: MB Docket No. 03-130

Dear Ms. Dortch:

On Friday, November 14, Steve Newberry of Commonwealth Broadcasting, Rolland Johnson of Three Eagles Communications, Mary Quass of the New Radio Group, Mark Fratrik of BIA Financial Network, together with Jeff Baumann, Karen Kirsch and the undersigned of NAB, met with Commissioner Kathleen Abernathy and Stacy Fuller of her staff, Commissioner Kevin Martin, Jordan Goldstein, Johanna Mikes Shelton, Bryan Tramont, Jonathan Cody, Ken Ferree, Bob Ratcliffe, Roy Stewart, Peter Doyle, Royce Sherlock, Mania Baghdadi, Judy Herman and Amy Brett to discuss the issues raised in this proceeding concerning defining markets for radio stations not located in Arbitron Metros.

We discussed the analysis that NAB and BIA had undertaken of the two proposals advanced by the Commission for a market definition for unrated stations as well as two additional proposals that were developed by NAB. All four proposals did not accurately or consistently describe radio markets. We showed that the proposals were in some cases significantly under-inclusive and in other cases over-inclusive. Both the MA and CMA proposals discussed in the *Further Notice* resulted in numerous situations where the unrated "market" overlaps with existing Metros. The non-Metro counties in those markets do not generally form rational markets by themselves and combining them with the counties in the adjacent Metros would have the odd result of creating larger markets for stations in unrated areas than for stations located in adjacent Metros.

The lack of any reliable geographic market for stations in unrated markets, we argued, should lead the Commission to retain the modified contours methodology it adopted as an interim market definition. That definition addresses the two anomalies that were identified concerning the existing contour methodology and appropriately takes into account radio stations of varying power and location, as well as geographic variations.

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Recognizing that the Commission expressed a belief that the use of contours to establish radio markets was inconsistent with antitrust theory, we pointed out that the Antitrust Division of the Justice Department – the expert agency on antitrust matters – had told the Commission that “geographic coverage of broadcast signals” should be one of the factors considered in defining radio stations’ markets.

We also discussed the fragile economic status of radio stations in small markets and the benefits that consolidation in those markets had permitted, both in terms of financial stability and access to capital, and in terms of public service such as increased local news and sports coverage.

The attached summary of NAB’s arguments and maps of four markets showing some of the problems that would be created by adoption of the proposed geographic market definitions was provided to every meeting participant.

Please direct any questions to the undersigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jack N. Goodman". The signature is fluid and cursive, with the first name "Jack" being the most prominent.

Jack N. Goodman

Attachment

cc: Meeting Participants

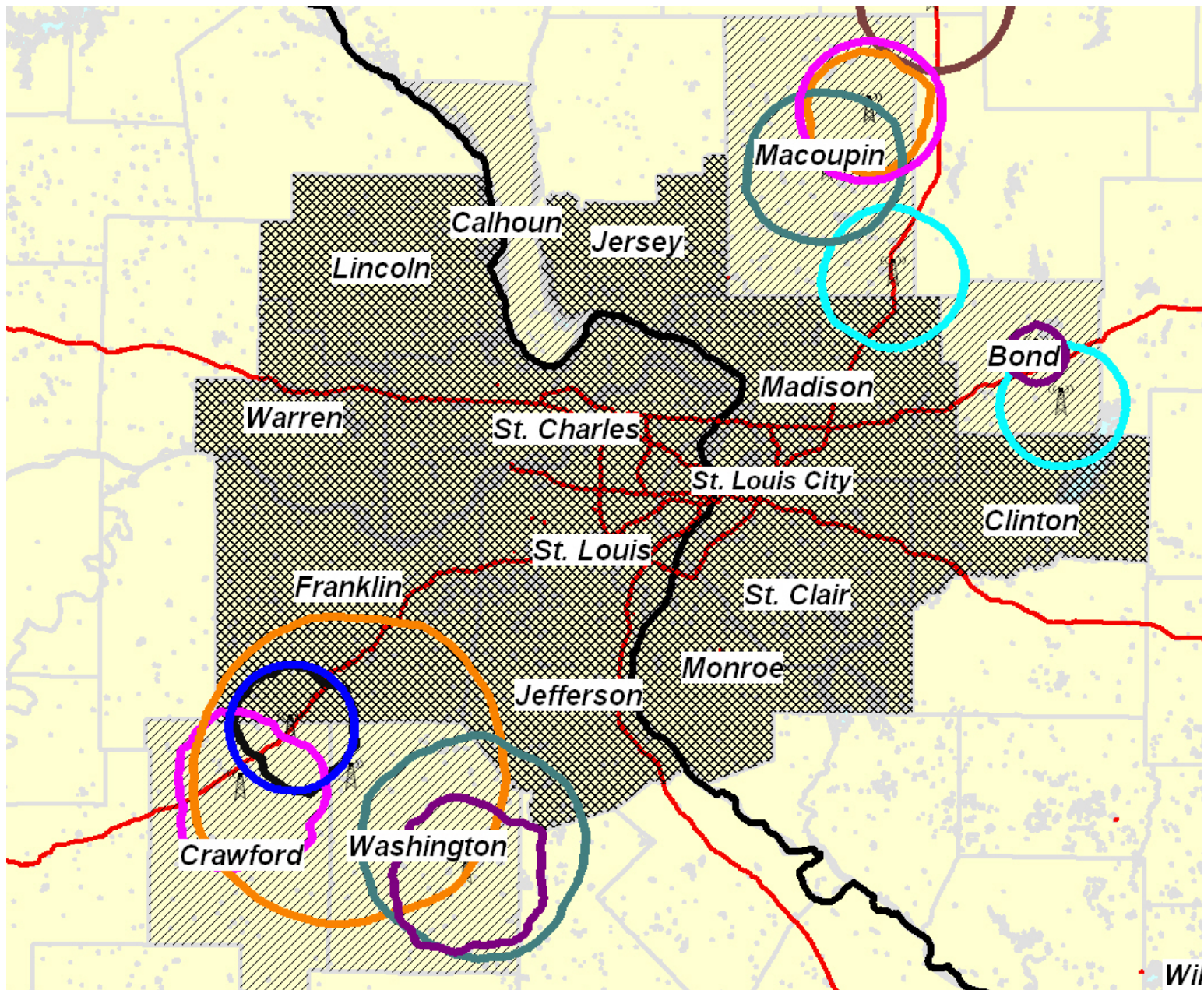


The FCC Should Retain the Modified Contours Method of Defining Radio Markets for Non-Rated Areas

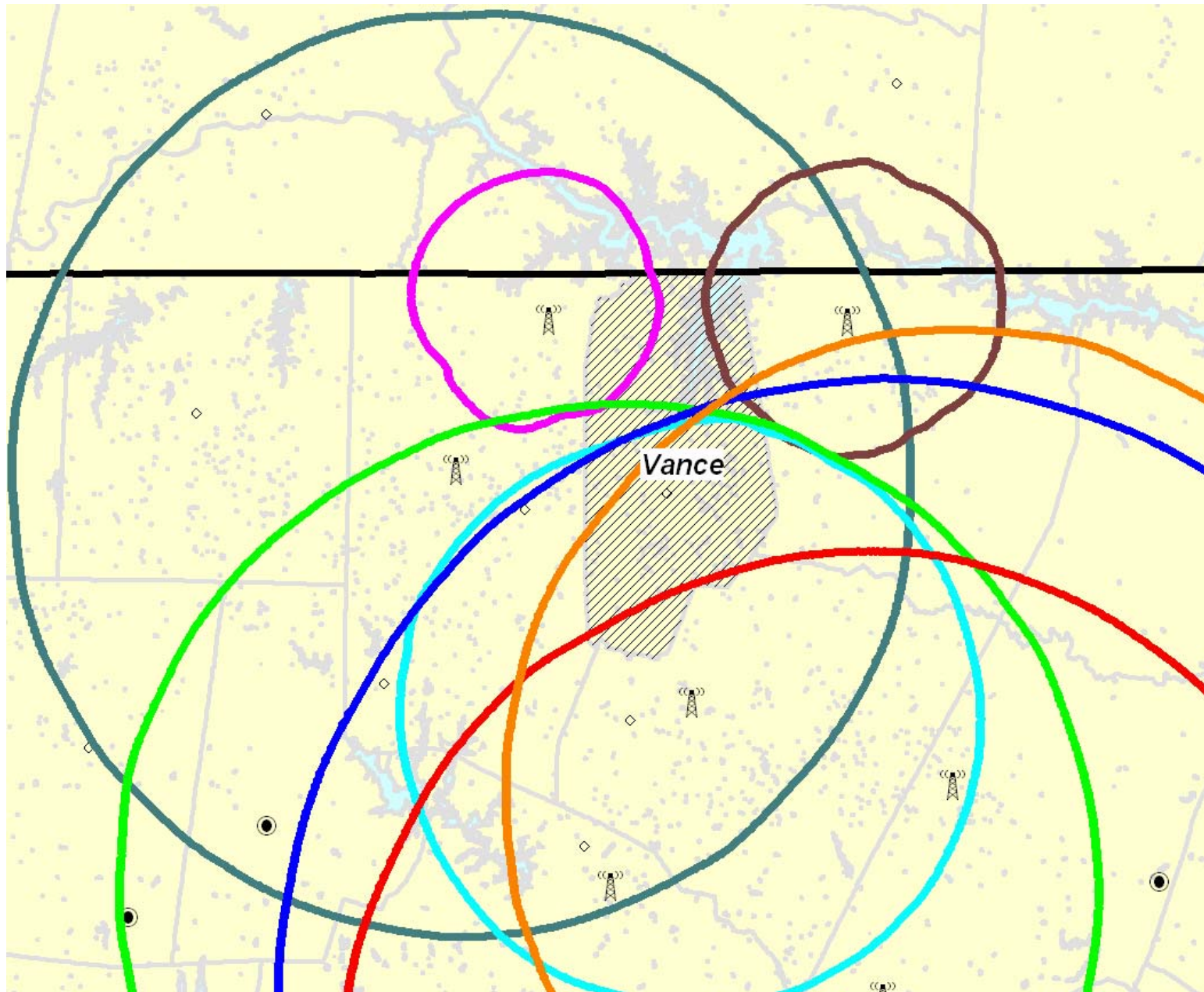
- NAB acknowledged the FCC's desire to find a consistent geographic market definition for radio stations outside of Arbitron Metros
 - We analyzed the two proposed definitions in the *Notice* as well as two others that seemed promising
 - The goal was to find a market definition that reflects radio service in a consistent, predictable and accurate manner
- Neither MAs nor CMAs can be used to establish radio markets
 - MAs do not include 18.7% of radio stations, requiring adoption of a 3rd market definition
 - 112 MAs overlap Arbitron Metros. Excluding the in-Metro stations would result in an unrealistic market; including them would double-count stations
 - MAs, which were not intended by OMB to be used for regulatory purposes, do not reflect patterns of radio service – radio signals do not neatly fall within county lines
 - 148 CMAs overlap Arbitron Metros and the non-Metro areas alone do not form rational radio markets
 - CMAs, which were defined to promote rural cellular service, do not relate to radio service – many include several entirely separate radio markets
 - Since CMAs follow both state and county boundaries, they do not reflect service from radio stations located nearby
- NAB also examined the use of Center of Commerce Areas (COCAs) based on population centers in each county
 - COCAs are not a satisfactory way to define radio service since they relied on assumptions of uniform service areas that in fact vary across the country

- COCAs also did not accurately reflect radio markets in Western areas where counties are larger, and no accurate way could be found to combine counties
- Markets cannot be defined based on listening patterns because the Arbitron data is not reliable and is not available in a form that permits application of consistent standards for establishing markets
- In the absence of a reliable and consistent geographic market, the FCC should retain the modified contour overlap method for non-Arbitron radio stations
 - Contours reflect actual radio service in widely varying geographic areas and show which radio stations actually have the potential to compete against each other
 - The reasons the FCC identified in support of geographic markets are not sufficient to outweigh the anomalies that would be created by any of the possible alternatives

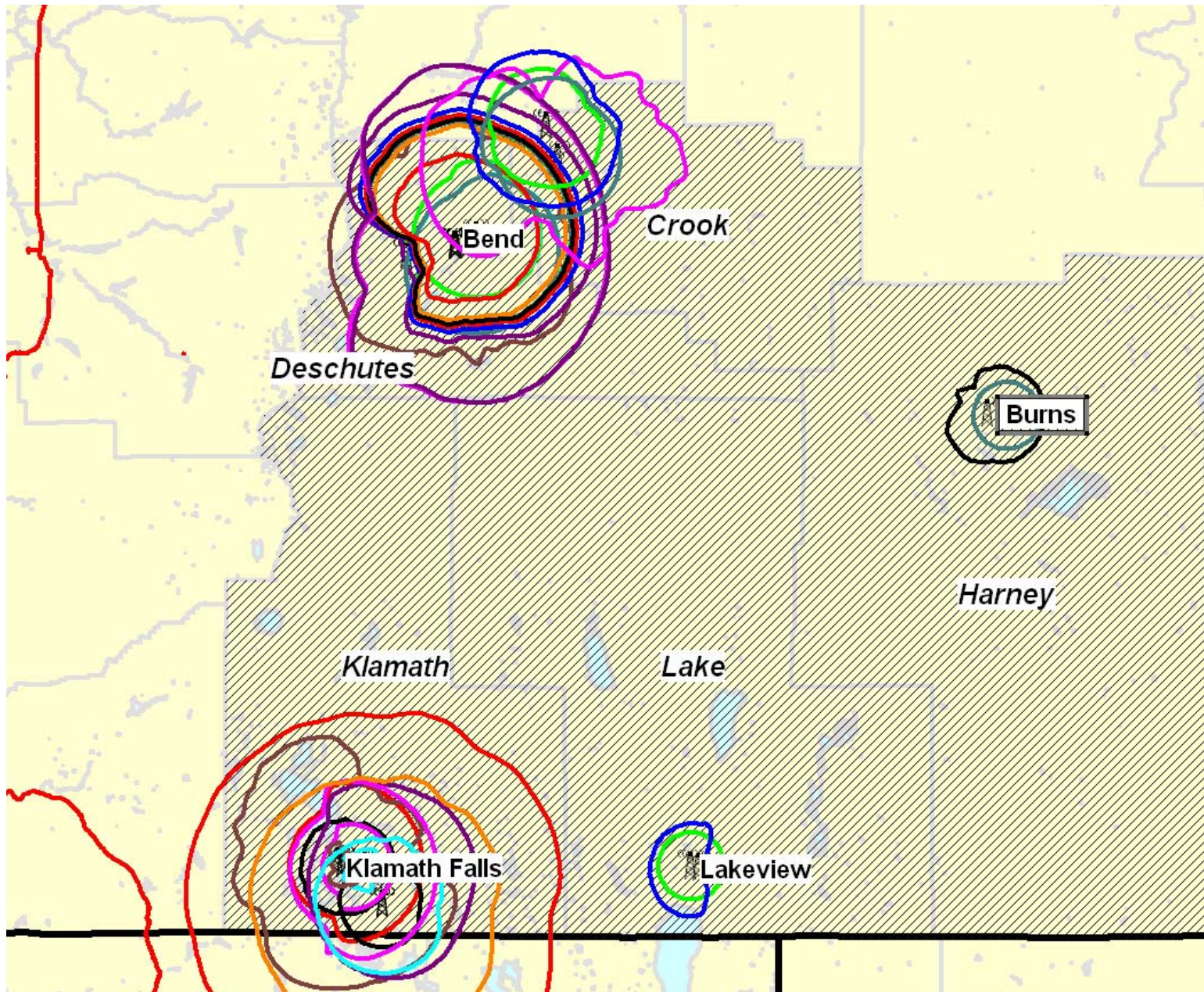
St. Louis OMB Metropolitan Statistical Area



Henderson, NC OMB Micropolitan Statistical Area



Oregon – 6 Cellular Market Area



Kentucky - 4 Cellular Market Area

